Supreme Court, U.S.
FILED
951865 OCT 10 1995
No. OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1996

RICHARD A. HOFMAN,

Petitioner,

vs.

JAMES A. GODOY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA;

PETITION FOR WRIT OF CERTIORARI

Law Offices of
RICHARD A. HOFMAN (110692)
15250 Ventura Blvd., Suite 252
Woodland Hills, CA 91364-2351
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Pro Per Petitioner

25 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the award of sanctions of the Trial Court and the award of the Court following a Motion to Disqualify on bias and other grounds deprived Defendant of due process of law under the Fifth Amendment of the United States Constitution.

2. Whether the award of sanctions of the Trial Court and the award of the Court following a Motion to Disqualify and actions taken thereafter deprived Defendant of due process of law under the Fourteenth Amendment to the United States Constitution since the Court was not empowered to proceed.

3. Whether the appellate process, and particularly the ex parte contacts and irregular briefing process sanctioned by the Appellate Court deprived Defendant of due process under the Fifth Amendment of the United States Constitution by unfairly denying Defendant of a full and fair opportunity to appeal the underlying decision.

4. Whether the appellate process and particularly the ex parte contacts and irregular briefing process sanctioned by the Court of Appeal deprived Defendant of due process under the Fourteenth Amendment to the United States Constitution by unfairly denying Defendant of a full and fair opportunity to appeal the underlying decision.

PARTIES IN MATTER

1. The Petitioner to the U.S. Supreme Court is Richard A. Hofman, Esq. He previously represented London Financial Association.

2. Respondent is James A. Godoy represented by David Leeper, Esq.

3. As non-parties but participants in the proceedings are the Trial Court, Court of Appeals and California Supreme Court.

TABLE OF CONTENTS

TABLE OF CONTENTS i
APPENDIX "A" ii
TABLE OF AUTHORITIES iii
PARTIES IN MATTER iv
JURISDICTION OF SUPERIOR COURT v
QUESTIONS PRESENTED FOR REVIEW 1
NATURE OF THE CASE AND PROCEDURAL HISTORY 3
SUMMARY 3
A. The Underlying Claim 4
MEMORANDUM OF POINTS AND AUTHORITIES 5
APPELLATE COURT OPINION 5
WHY SHOULD REVIEW BE GRANTED? 6
ISSUE NO. 2 8
CONCLUSION 10

APPENDIX "A"

1. Opinion of Court of Appeal.

2. Denial of Petition by California Supreme Court.

TABLE OF AUTHORITIES

	Page
1. C.C.P. §170.6 et seq.	4

JURISDICTION OF SUPERIOR COURT

In or about May, 1993, the Trial Court issued its ruling in this matter. In or about April, 1995, the Court of Appeals issued its ruling with regard to this matter. On or about July 12, 1995, despite Petitioner's compelling request, the California Supreme Court denied review. Within the statutory time (90 days), Petitioner has sought discretionary review of the underlying decisions based on the presence of important federal constitutional questions. The federal questions, absence of due process per both the Federal and State Constitutions were raised first in the California Appellate Court. Review was denied in the California Supreme Court.

Clearly, the Court has discretionary review of this matter which involves important questions of constitutional law.

NATURE OF THE CASE AND PROCEDURAL HISTORY SUMMARY

This is a matter which truly demands the intervention of the U.S. Supreme Court to consider issues which are important and essential to the effective resolution of important constitutional issues. This is a matter which considers important issues of due process in the context of court processes. The lower Court, as improperly ratified by the Appellate Court, went forward and conducted and proceeded to conduct its own witch hunt and issue a material ruling, imposing a large monetary sanction, in a matter in which it should not have been involved with in the first place. The Court's failure to properly follow procedures and respond to a Motion for Disqualification caused Appellant to be denied due process under the Federal Constitution. In light of the public's lack of confidence in court processes as exacerbated by the verdict in the Simpson case in California, it is important for this Court to step in and remedy the procedural, but substantive deficiencies of the California Supreme and Appellate Courts

The Court of Appeal affirmed the Trial Court's decision. Curiously, the Court failed to address Appellant's claim of bias and the coercion and unfairness of the process. In fact, it is the Court of Appeal who played a substantial factor in the irregular proceedings and denial of due process. The bottom line

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is that the Trial Court should not have gone forward.[1]

Due to the irregularities in this matter and claim of constitutional violations which have been asserted, to continue to operate the judicial system in a fair and effective manner, this is the type of case which needs to be analyzed to guarantee the public's confidence in court processes.

A. The Underlying Claim

The instant matter arose out of Demurrer which was filed challenging the sufficiency of a Complaint. Specifically, there was a claim that a contract was not specifically pled. Although Respondent asserted that they did not get served with the Demurrer they stipulated to the relief sought and agreed to provide a copy of the contract, at which the Demurrer was aimed.

Following various proceedings, a Motion to Disqualify on bias and perceived (C.C.P. §170.6 et seq.) bias grounds became necessary. The Motion was filed prior to the evidentiary hearing at which time the Court ruled. Again, it is the very Court which

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FN1 - The briefing process in the Court of Appeal was irregular and unfair. Respondent, who indicated he did not want to file a Brief, was directed to, ex parte, through the Trial Court's secretary. The Court of Appeal without contacting Petitioner, without giving notice to Petitioner, confirmed this and asked that a letter Brief be filed. The Trial Court then also employed outside counsel to file an Amicus Curie Brief. Was this a fair and objective proceeding? Curiously, the decision of the Appellate Court indicated that Respondent had not appeared. In fact, the Appellate Court and Trial Court directed that Respondent file a Brief, and apparently, pushed Respondent into taking actions against Petitioner which it did not intend to take otherwise. In effect, it is both the Trial Court and Appellate Court which were an instrumentality in depriving Petitioner of his constitutionally granted rights.

was claimed to be biased which conducted proceedings and ruled against Petitioner.

After the Court expressed its intention to conduct evidentiary hearings, notwithstanding claims of unfairness, notwithstanding the Motion to Disqualify, without responding to same, without providing opposition or referring the matter to another judge for consideration, Appellant, in a quandary and uncomfortable in light of the fact of proceeding with a Motion to Disqualify to be determined by the deciding judge, after being coerced to do so, withdrew the Motion to Disqualify. Same was not an enforceable withdrawal based on circumstances.

The Trial Court indicated that the Motion could not be withdrawn, but still accepted the withdrawal, didn't address its bias and prejudice in any capacity and proceeded to conduct its evidentiary hearing and rule on a matter outside its jurisdiction.

MEMORANDUM OF POINTS AND AUTHORITIES
APPELLATE COURT OPINION

The opinion of the Court of Appeal affirmed the Trial Court's opinion. The Supreme Court, despite compelling issues, failed to hear this case. The Court of Appeal failed to address the seemingly irregular process undertaken by the Trial and Appellate Courts. The Appellate Court failed to address the issues of coercion, the issue of the improper withdrawal, the failure to respond to the Motion, the Court's witch hunt, the Court's ex parte contact with Respondent and other such issues. Most importantly, the Court failed to address in any fashion oddly, the central issue of Petitioner's proceeding: was

Petitioner provided fair process per the United States Constitution.

It appears, although the issues of due process were raised, that for whatever reason the Court was not interested in addressing and protecting the due process rights of Appellant and examining the procedural irregularities of the Trial Court. It is apparent that the reviewing courts were not interested in properly policing the activities of its own courts.

Petitioner is painfully disturbed that its substantive and procedural rights of due process have been intentionally deprived. All actions of the Courts of California support this conclusion. In fact, it is the only reasonable conclusion which can be applicable to these facts.

In light of the actions of the Trial Court and the oppressive and significant decision of same, how can the Courts of California tolerate such judicial conduct under the circumstances. Unfortunately, in light of what occurred in the Appellate process, the Appellate Court was and played an essentiai role in this deprivation of constitutional rights. Fair hearings are at the core of the constitutional requirements of the due process claimed of both the Fifth and Fourteenth Amendments. This proceeding has been the epitome of the absence of same.

WHY SHOULD REVIEW BE GRANTED?

1. Whether the award of the Court of sanctions and other actions take in light of the Motion to Disqualify deprived Appellant of due process and fair proceedings under both the 5th and 14th Amendments of the United States Constitution.

The Fifth and Fourteenth Amendments of the United States Constitution demand fairness and fundamental fair play in legal processes. It is required that when in doubt courts should error in favor of a party's rights in preserving to protect a litigant's constitutional rights.

In the instant matter, it appears the Trial Court did not choose to adhere and follow this standard. It conducted a witch hunt on a questionable issue in a manner which did not befit a Trial Court. It ignored a Motion to Disqualify on "bias" and other grounds filed as soon as appropriate, and coerced a withdrawal of same even though acknowledging that such a Motion could not be withdrawn.

Consistent with its clear (tunnel vision) intention to proceed, the Court conducted an evidentiary hearing. It issued a predetermined ruling, while ignoring the rights and privileges of Appellant.[2]

The Supreme Court is now in the position to review the matter to verify that the Trial Court did in fact conform with judicial standards of due process and fair play. How can litigants have any confidence in the judicial system where courts do not adhere to basic and minimal due process standards? The Court was required to analyze the claims of bias and not coerce parties into participation into proceedings. A court must not

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FN2 - It is important to understand that unlike most court proceedings, it was not Respondent, but the Trial Court, which proceeded to operate as the evidence gatherer, trier of fact and legal decision-maker all in one proceeding. Same was despite the existence of the Court's bias. Same is a blatant denial of Petitioner's rights.

engage in extrajudicial actions which are beyond the proceedings before them.

The Court should review the actions of the Trial Court to ascertain if in fact such standards of due process and fairness occurred in the instant. Was in fact Appellant provided fair process? Petitioner was denied such process.

ISSUE NO. 2

Whether the appellate process and particularly the ex parte contacts and irregular briefing process sanctioned by the Court of Appeal deprive Appellant of due process under the Fifth and Fourteenth Amendments of the United States Constitution, by unfairly denying Appellant of a full and fair opportunity to appeal the underlying decision.

As a backdrop to the due process issues, evidence suggests that Appellant was deprived of a minimal level of due process in the proceedings undertaken by Appellant with regard to this case. Additional irregularities were ratified by the Court of Appeal in the appellate process. Such irregularities participated in by the Appellate Court and ignored by the California Supreme Court, exacerbated the due process violations of the Trial Court.

There is direct evidence that the personnel of the Trial Court contacted Respondent's counsel and directed Respondent to file an Appellate Brief. Appellant did not receive any notice of this but for notice from Respondent's counsel. Furthermore, there is evidence that Respondent, who did not want to file a Brief, contacted the Court of Appeal and was directed to file a letter Brief, again <u>without notice</u> to Appellant. Without notice to Appellant, without ruling on same, the Court of Appeal then

permitted an Amicus Curie Brief to be filed on behalf of the Trial Court.

Curiously, in its opinion, the Court of Appeal failed to indicate that Respondent had filed a Brief and that it and the Trial Court, ex parte, directed that same be done. It strongly appears that the Appellate Court stacked the deck against Appellant. Did the Court of Appeal have a personal interest in this proceeding? Did it have ties to the Trial Court?

Thus, we have the appellate process which not only "curiously" does not address the procedural deficiencies of the Trial Court and surprisingly ignored said issues, but who sanctioned and contributed to improper conduct during the appellate process. How can an appellant obtain a fair proceeding if the Court of Appeal is a participant in those very improper proceedings.

The failure of the Court to follow the most basic tenets of full disclosure and proper procedure has denied Appellant due process. Ex parte contacts, without notice to Appellant, give rise at least to a clear and persuasive presumption that the Courts have not operated fairly. In light of Appellant's contentions with regard to the Trial Court, shouldn't the Appellate Court have acted above board?

If the Court has nothing to hide, why did it operate in secret to the undisclosed detriment of Petitioner? Are the Courts of this land permitted to conduct proceedings without regard to rules and procedures? Clearly, they are not; however, in the instant matter they chose to ignore all aspects of fair play. Again, the issues at hand and which must be analyzed by

the Court is the degree by which a court of appeal must conduct fair and open proceedings to properly provide an appellant its rights of appeal. The issues of the opinion of the judiciary must be regulated to provide litigant's confidence in proceedings. The actions of the Court of Appeal must be scrutinized herein.

CONCLUSION

Since Appellant's due process rights have been trampled on, the actions of both the Trial and Appellate Courts must be analyzed to ascertain if constitutional provisions of due process have been afforded. The ruling of the Trial Court must be overturned for purposes of upholding the Constitution of this land. This is a special case.

DATED: October 10 , 1995

Law Offices of
RICHARD A. HOFMAN

By: _____
RICHARD A. HOFMAN
Attorney for Defendant/
Appellant LONDON FINANCIAL
ASSOCIATION, INC.

12-22-20

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION SIX

JAY GODOY, Plaintiff and Respondent, LONDON FINANCIAL ASSOCIATION and RICHARD HOFMAN, Defendants and Appellants.	2d Civil No. B077061 (Super. Ct. No. 120883) (Ventura County) FILED APR 26, 1995 JOSEPH A. LANE, Clerk Deputy Clerk

London Financial Association and Richard A. Hofman, its counsel, (collectively, appellants) appeal the trial court's May 12, 1993 order awarding $4,000 in sanctions against appellants and in favor of respondent, Jay Godoy. Appellants contend the trial court "was not permitted to go forward" with the hearing on respondent's request for sanctions because appellants had filed a motion to disqualify the trial court, pursuant to Code of

Civil Procedure section 170.6, on the ground that the court was biased or prejudiced against both appellants.[1]

Respondent requested sanctions because Hofman, appellant's counsel, failed to serve respondent with a demurrer to the first amended complaint. The request for sanctions was accompanied by declarations from respondent's counsel establishing that respondent had incurred approximately $4,000 in attorneys fees and costs in connection with the demurrer and request for sanctions.

The demurrer was resolved without a hearing or ruling by the trial court. Respondent's request for sanctions was, however, the subject of a two-day hearing. After the first day of the hearing, appellants filed a motion to disqualify pursuant to section 170.6. Two weeks later, on the second day of the hearing, appellants voluntarily withdrew the motion to disqualify.

The trial court found that Hofman "perjuriously declared that [respondent's counsel] had been personally served with the demurrer and caused to be filed a forged, fabricated, false and fraudulent 'proof' of this contrived service." Hofman had identified Kenneth Marks as the messenger who served the demurrer. After obtaining handwriting exemplars from Marks and comparing them with the signature of Hofman and the purported proof

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[1] All statutory references are to the Code of Civil Procedure unless otherwise stated.

of service, the trial court found, "beyond a reasonable doubt that Marks did not serve [respondent's counsel], did not author or execute any document in the court's file and did not testify truthfully as to any material fact." It further found, "by at least a preponderance of the evidence that Hofman himself executed and forged the documents in controversy and that he knowingly and willfully presented his own false testimony and that of Marks in an effort to conceal his own criminal conduct." Finally, the trial court found that Hofman acted "utterly in bad faith and solely for the purpose of harassing the opposing party. His tactics in continuing to assert service in the face of its known falsehood [are] reprehensible [and] beyond the pale of § 128.5."

Appellants contend the trial court erred in ruling on respondent's request for sanctions after appellants filed their motion to disqualify. Section 170.6, subdivision (2) provides: "If the motion [to disqualify] is directed to a hearing (other than the trial of a cause), the motion shall be made not later than the commencement of the hearing." Here, appellants filed their motion after the hearing on respondent's request for sanctions began. The motion was untimely and would inevitably have been denied.

Respondent contends that the order awarding sanctions is not appealable because the amount of the sanction did not exceed $5,000. (§ 904.1, subd.

(a)(12).) When appellants filed their notice of appeal on July 12, 1993, section 904.1 allowed for the appeal of an order awarding more than $750 in sanctions. The jurisdictional minimum was increased to $5,000 effective January 1, 1994. (Stats. 1993, ch. 456, § 12, Deering's Adv. Legis. Service, p. 2184.) The order is appealable.

Turning to its merits, there is no abuse of discretion. (Olson Partnership; v. Gaylord Platina Lab. Inc. (1990) 226 Cal.App.3d 235, 240.) Substantial evidence supports the trial court's factual determination that Hofman filed a fraudulent proof of service and a false declaration, perjured himself during the hearing and presented the perjured testimony of another witness. The trial court was not only justified in awarding sanctions against appellants, it showed restraint in both the amount of the sanction and its comments at the hearing.

Appellants waived any argument that they lacked proper notice of the request for sanctions. When the trial court asked Hofman whether he was "complaining that [he had] not received adequate notice of this proceeding and the purpose[,]" Hofman replied, "I can't make that claim, your Honor."

Respondent requests that appellants be sanctioned for pursuing a frivolous appeal. While we agree that appellants' contentions are without merit, we believe that further monetary sanctions are not appropriate. Respondent has been adequately compensated

for the costs associated with appellants' bad faith litigation tactics. Accordingly, respondent's request for additional sanctions is denied. However, we order that the clerk send a copy of this opinion to the California State Bar, Office of the Chief Trial Counsel, for whatever disciplinary action, if any, it deems appropriate.

The order is affirmed. Costs to respondent.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

STONE, P. J.

GILBERT, J.

Frederick A. Jones, Judge

Superior Court County of Ventura

Richard A. Hofman, for Appellants.

No appearance for Respondent.

Lascher & Lascher, a Professional Corporation, and Wendy C. Lascher, Amicus Curiae for Respondent.

PROOF OF SERVICE BY MAIL:
STATE OF CALIFORNIA. COUNTY OF LOS ANGELES:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action, my business address is 20501 Ventura Boulevard, Suite 252, Woodland Hills, California 91364-2351.

On October 10, 1995, I served the foregoing documents described as PETITION FOR WRIT OF CERTIORARI on thee interested parties in this action by mail by placing [_] the original [✔] a true copy thereof enclosed in sealed envelopes addressed as follows:

David M. Leeper, Esq.
1820 South Elena Avenue
Suite B
Redondo Beach, CA 90277

I am "readily familiar" with the firm's practice of. collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Woodland Hills, California in the ordinary course of business. I am aware that on Motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 10, 1995 at Woodland Hills, California.

_____

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Clerk of the Ventura Superior Court
800 S. Victoria Avenue
Ventura, CA 93009

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Abacus Curiae
Wendy C. Lasher
605 Poll Street
P.O. Box 25540
Ventura, CA 93002

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Woodland Hills, California in the ordinary course of business. I am aware that on Motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 2 , 1995 at Woodland Hills, California.

_____

PROOF OF SERVICE BY MAIL:
STATE OF CALIFORNIA. COUNTY OF LOS ANGELES:

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On October 10, 1995, I served the foregoing documents described as PETITION FOR WRIT OF CERTIORARI on the interested parties in this action by mail by placing [_] the original [✔] a true copy thereof enclosed in sealed envelopes addressed as follows:

Clerk of the Court of Appeal
Second Appellate District
200 E. Santa Clara Street
Ventura, CA 93001

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Woodland Hills, California in the ordinary course of business. I am aware that on Motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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